

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
CASE NUMBER: 2:21-cv-01904-BHH**

Progressive Northern Insurance Company,

Plaintiff,

v.

Isabel Chanler Shamamian,

Defendant.

**AMENDED
COMPLAINT
(Declaratory Judgment)**

Plaintiff, Progressive Northern Insurance Company (hereinafter “Progressive”), seeks declaratory relief to determine the rights of the parties and compensatory relief and alleges and shows as follows:

JURISDICTION & VENUE

1. Progressive is an insurance company organized and existing under the laws of the State of Wisconsin with its principal place of business in the State of Ohio. Progressive is authorized to transact business in the State of South Carolina, including writing policies of insurance.

2. Upon information and belief, Isabel Chanler Shamamian was a citizen and resident of Charleston County, South Carolina at all relevant times.

3. This matter is brought in part pursuant to Rule 57 of the Federal Rules of Civil Procedure and pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; there is a real or justiciable controversy between the parties, and by these proceedings Plaintiff asks this Court to inquire into and declare the rights and obligations of the parties hereto arising out of the facts set forth below.

4. Venue is proper in this Division and this Court pursuant to 28 U.S.C. § 1391(b)(2) as, upon information and belief, a substantial part of the events giving rise to this claim occurred in this Division.

5. The amount in controversy exceeds Seventy-Five Thousand and No/100 (\$75,000.00) Dollars, exclusive of interests and costs, and there is complete diversity of citizenship. Therefore, this Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1332(a)(1).

FACTS

6. On or about October 26, 2018, Isabel Chanler Shamamian, was struck by a vehicle driven by Perressa Miller Ramsey, while walking in a pedestrian crosswalk in Charleston, South Carolina.

7. Perressa Miller Ramsey's auto insurance company tendered its liability limits of \$25,000.00 to Isabel Chanler Shamamian. She then submitted a claim for UIM benefits to Progressive.

8. Progressive issued a personal auto policy, Policy No. 924760730, to Llewelyn Sinkler with effective dates of September 29, 2018 to March 29, 2019 (hereinafter the "Progressive Policy").

9. The Progressive Policy lists Llewelyn Sinkler as the named insured and Oscar Shamamian as a Driver and resident relative. Isabel Chanler Shamamian was not listed as a driver or resident relative.

10. The Progressive Policy lists one insured vehicle and provides underinsured motorist ("UIM") combined single limit of \$500,000.

11. Isabel Chanler Shamamian claimed the full UIM limits for her injuries sustained in the accident.

12. The Progressive Policy lists Llewelyn Sinkler and Oscar Shamamian's address as Charleston, South Carolina.

13. Llewelyn Sinkler and Oscar Shamamian did not reside in Charleston, South Carolina at all relevant times. Instead, they resided in New York, New York at all relevant times. Moreover Llewelyn Sinkler did not reside with Isabel Chanler Shamamian at any relevant time.

14. Progressive craves reference to the Progressive Policy for all terms, conditions, and provisions therein and incorporates them by reference herein. A copy of the Progressive Policy is attached hereto as Exhibit A.

15. The Progressive Policy provides in pertinent part:

PART III – UNINSURED/UNDERINSURED MOTORIST COVERAGE

INSURING AGREEMENT – UNDERINSURED MOTORIST COVERAGE

If **you** pay the premium for this coverage, **we** will pay for damages that an **insured person** is legally entitled to recover from the owner or operator of:

1. an **underinsured motor vehicle** because of **bodily injury**:
 - a. sustained by an **insured person**;
 - b. caused by an accident; and
 - c. arising out of the ownership, maintenance, or use of an **underinsured motor vehicle**;

ADDITIONAL DEFINITIONS

When used in this Part III:

1. "**Insured person**" means:
 - a. **you, a relative, or a rated resident**;
 - b. any person while operating a **covered auto** with the permission of **you, a relative, or a rated resident**;
 - c. any person **occupying**, but not operating, a **covered auto**; and

- d. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a., b. or c. above.

GENERAL DEFINITIONS

The following definitions apply throughout the policy. Defined terms are printed in boldface type and have the same meaning whether in the singular, plural, or any other form.

11. **“Relative”** means a person residing in the same household as **you**, and related to **you** by blood, marriage or adoption, and includes a ward, stepchild, or foster child. **Your** unmarried dependent children temporarily away from home will qualify as a **relative** if they intend to continue to reside in **your** household.

OTHER INSURANCE

If there is other applicable uninsured or underinsured motorist coverage, **we** will pay only **our** share of the damages. **Our** share is the proportion that **our** limit of liability bears to the total of all available coverage limits....

FOR A FIRST DECLARATION

16. Plaintiff repeats and realleges each and every one of the allegations set forth above as if set forth verbatim herein.

17. Isabel Chanler Shamamian is not a ‘relative’ as defined by the Progressive Policy because she did not reside with Llewelyn Sinkler or Oscar Shamamian at any time relevant to this Complaint.

18. Therefore, Progressive is entitled to a declaration that there is no Underinsured Motorist Protection under the Progressive Policy because Isabel Chanler Shamamian is not an “Insured person” as defined under the Progressive Policy.

WHEREFORE, Progressive requests that this Court inquire into these matters and declare that there is no Underinsured Motorist Protection coverage under the Progressive Policy because

Isabel Chanler Shamamian is not an “Insured person” under the Policy by virtue of not residing with the named insured, together with the costs of this action and such further relief as the court deems necessary.

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